

MATTHEW J. GIACOBBE, Partner
mgiacobbe@scarincihollenbeck.com
Direct Phone: 201-623-1207

July 2, 2009

VIA HAND DELIVERY

Clerk of the Court
Somerset County Superior Court
Chancery Division
20 N. Bridge Street
Somerville, New Jersey 08876

Re: Borough of Rocky Hill, et als. v. State of New Jersey, et als.
Docket No:
Our File: 9110.1000

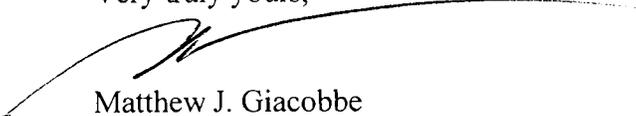
Dear Sir/Madam:

Enclosed for filing please find an Original and two copies of Verified Complaint, Emergent Order to Show Cause with Temporary Restraints Pursuant to Rule 4:52 and a Brief Order to Show Cause Pursuant to Rule 4:52 together with Proof of Service with regard to the above noted matter. Please file same return a copy marked filed to my attention in the enclosed self addressed stamped envelope provided. Please note that this is an Emergent Request and we respectfully request a hearing at the Court's earliest convenience.

Also enclosed is our check in the amount of \$230.00 representing your filing fee.

Thank you.

Very truly yours,



Matthew J. Giacobbe

Encl.

cc: Office of Attorney General, State of New Jersey
Commission of Education
Executive County Superintendent/Sommerset County

{00495976.DOC}

SCARINCI HOLLENBECK
1100 VALLEY BROOK AVENUE
P.O. BOX 790
LYNDHURST, NEW JERSEY 07071-0790
Telephone: (201) 896-4100
Attorneys for Plaintiffs, Borough of Rocky Hill,
Rocky Hill Board of Education,
Millstone Borough Board of Education,
Janine Lacava
Our File No. 9110.1000

Borough of Rocky Hill, Rocky Hill Board of
Education, Millstone Borough Board of
Education, Janine Lacava (an individual
taxpayer from the Borough of Rocky Hill)

Plaintiff(s),

vs.

State of New Jersey, New Jersey Department
of Education, County Executive
Superintendent, Somerset County

Defendant(s)

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: SOMERSET
COUNTY
DOCKET NO.

Civil Action

VERIFIED COMPLAINT

The Borough of Rocky Hill, a municipal corporation and political subdivision of the State of New Jersey and the Rocky Hill Board of Education and the Millstone Board of Education, body politics and corporate political subdivisions of the State of New Jersey and Janine Lacava, an individual taxpayer from the Borough of Rocky Hill, hereby state as follows by way of Complaint against the Defendants:

THE PARTIES

1. The Borough of Rocky Hill ("Borough") is a municipal corporation and a political subdivision of the State of New Jersey with offices located at 15 Montgomery Ave Rocky Hill, New Jersey 08553-1011.

2. The Rocky Hill Board of Education is a body politic and corporate political subdivision of the State of New Jersey with offices located at PO Box 270, Rocky Hill, New Jersey.

3. The Millstone Board of Education is a body politic and corporate political subdivision of the State of New Jersey with offices located at P.O. Box 854, Somerville, New Jersey 08876.

4. Janine Lacava is a taxpayer in the Borough of Rocky Hill and serves as President of the Rocky Hill Board of Education with an address of 62 Hickory Court, Rocky Hill, New Jersey. (Collectively, the four (4) Plaintiffs are referred to as "Plaintiffs".)

5. Frank Chilson is presently the Business Administrator for the Rocky Hill Board of Education and the Millstone Board of Education.

6. The State of New Jersey is an incorporated member State of the United States of America with legislative offices located at Office of Legislative Services, Office of Public Information, Room 50, State House Annex, 125 West State Street, P.O. Box 068, Trenton, NJ 08625-0068.

7. The Commissioner of Education is the individual charged with implementing and enforcing laws and regulations governing education in the State of New Jersey, with offices located at 100 River View Plaza, P.O. Box 500, Trenton, New Jersey 08625.

8. The Executive County Superintendent of Somerset County supervises and administers the day-to-day functions of the County Office of Education as a representative of the Commissioner of Education with offices located at 27 Warren Street, Somerville – 4th floor, Somerville New Jersey 08876 with a mailing address of: PO Box 3000, Somerville, NJ 08876.

FACTS COMMON TO ALL COUNTS

9. The Borough of Rocky Hill sends its children to the Montgomery School District, through the administration of the Rocky Hill Board of Education. The Rocky Hill Board of Education does not operate any schools. The Borough pays a per pupil cost for each student through assessed tax levies.

10. The Millstone Board of Education sends students from the Borough of Millstone to the Hillsborough School District. The Millstone Board of Education does not operate any schools. The Board of Education pays a per pupil cost through the collection of tax revenues.

11. The Legislature of the State of New Jersey recently passed A-4141/S-3000, which clarifies the procedure under which non-operating will be eliminated and merged into existing school districts. The Governor signed the bill into law on June 30, 2009.

12. Pursuant to the terms of the Legislation, the board of education of the newly merged district will initially consist of the members of the board of the district with which the non-operating district was merged, who will serve until the expiration of the respective terms for which they were elected.

13. In addition, a representative of the board of the former non-operating district, who will serve in a temporary position that will be in existence only until the first annual school election in which the first at-large member is elected to the board.

14. At that first election, and every election following, any vacant positions on the board will be filled by members elected at-large by the voters of the new district.

15. Due to the comparatively small population of the Borough of Rocky Hill, at the next election, and continuing thereafter, the Borough will not have representation.

16. The Rocky Hill and Millstone Boards of Education will cease to exist, but the citizens will continue to be assessed taxes and pay into the Montgomery and Hillsborough school districts.

17. The Commissioner of Education has already contacted the Rocky Hill Board of Education and the Millstone Board of Education to discuss the transitioning of the non-operating district operations to the receiving district. Dates for this meeting have been proffered for as early as July 9, 2009.

18. The emergent nature of the situation is the proper basis for the Court to enjoin the Department of Education from proceeding with enforcement of the Legislation.

COUNT I

19. Plaintiffs repeat and reallege the facts set forth in the paragraphs above.

20. A-4141/S-3000 violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

WHEREFORE, Plaintiffs demand relief against Defendants as follows:

(a) An Order that the Department of Education is enjoined from enforcing A-4141/S-3000;

(b) An Order that the Executive County Superintendent of Somerset County shall not dissolve, merge, or take any other action against the Rocky Hill Board of Education or the Millstone Board of Education until this matter has been further adjudicated;

(c) An Order that the Legislature revise A-4141/S-3000 to grant "sending" municipalities permanent representation or seats on "receiving" Boards of Education;

(d) Granting such other relief as the Court deems equitable and just.

COUNT II

21. Plaintiffs repeat and reallege the facts set forth in the paragraphs above.

22. A-4141/S-3000 violates Article 1, Para. 1 of the New Jersey State Constitution.

WHEREFORE, Plaintiffs demand relief against Defendants as follows:

(a) An Order that the Department of Education is enjoined from enforcing A-4141/S-3000;

(b) An Order that the Executive County Superintendent of Somerset County shall not dissolve, merge, or take any other action against the Rocky Hill Board of Education or the Millstone Board of Education until this matter has been further adjudicated;

(c) An Order that the Legislature revise A-4141/S-3000 to grant “sending” municipalities permanent representation or seats on “receiving” Boards of Education;

(d) Granting such other relief as the Court deems equitable and just.

COUNT III

23. Plaintiffs repeat and reallege the facts set forth in the paragraphs above.

24. A-4141/S-3000 violates the prohibition against “taxation without representation” and established caselaw granting municipalities representation on boards of education in school districts wherein they have a “sending-receiving” relationship.

WHEREFORE, Plaintiffs demand relief against Defendants as follows:

(a) An Order that the Department of Education is enjoined from enforcing A-4141/S-3000;

(b) An Order that the Executive County Superintendent of Somerset County shall not dissolve, merge, or take any other action against the Rocky Hill Board of Education or the Millstone Board of Education until this matter has been further adjudicated;

(c) An Order that the Legislature revise A-4141/S-3000 to grant "sending" municipalities permanent representation or seats on "receiving" Boards of Education;

(d) Granting such other relief as the Court deems equitable and just.

VERIFICATION

1. I am Frank Chilson, Business Administrator for the Rocky Hill Board of Education and the Millstone Board of Education.
2. I have read the foregoing Complaint and on my own personal knowledge I know that the facts set forth herein are true and they are incorporated into this certification by reference.
3. I certify that the above statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.


Frank Chilson

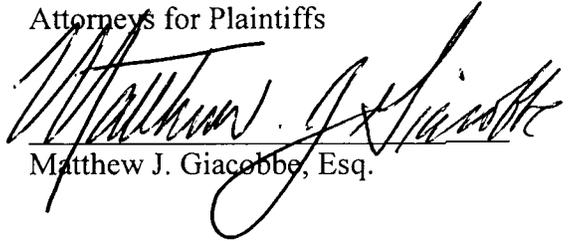
Dated: July 1, 2009

R. 1:4-4(c) COUNSEL CERTIFICATION REGARDING FACSIMILE SIGNATURE

I, Matthew M. Giacobbe, of full age, certify that Frank Chilson, the signatory of the foregoing verification, is not available to sign the foregoing verification in person but has acknowledged the genuineness of his signature thereon, the attached signature is a facsimile of the original signature, and an original signature will be filed if requested, in accordance with R. 1:4-4(c).

SCARINCI HOLLENBECK
Attorneys for Plaintiffs

By:

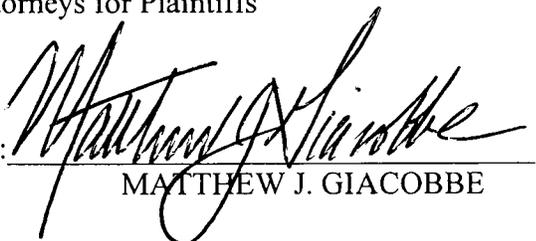

Matthew J. Giacobbe, Esq.

Dated: July 1, 2009

RULE 4:5-1 CERTIFICATION

The Plaintiff hereby certifies that the matter in controversy is not the subject of any other action pending in any court and is likewise not the subject of any pending arbitration proceeding. The Plaintiff further certifies that the Plaintiff has no knowledge of any contemplated action or arbitration proceeding which is contemplated regarding the subject matter of this action. The Plaintiff further certifies that the Plaintiff is not aware of any other parties who should be joined in this action.

SCARINCI HOLLENBECK
Attorneys for Plaintiffs

By: 

MATTHEW J. GIACOBBE

Dated: July 1, 2009

SCARINCI HOLLENBECK
1100 VALLEY BROOK AVENUE
P.O. BOX 790
LYNDHURST, NEW JERSEY 07071-0790
Telephone: (201) 896-4100
Attorneys for Plaintiffs, Borough of Rocky Hill,
Rocky Hill Board of Education,
Millstone Borough Board of Education,
Janine Lacava
Our File No. 9110.1000

Borough of Rocky Hill, Rocky Hill Board of
Education, Millstone Borough Board of
Education, Janine Lacava (an individual
taxpayer from the Borough of Rocky Hill)

Plaintiff(s),

vs.

State of New Jersey, New Jersey Department
of Education, County Executive
Superintendent, Somerset County

Defendant(s)

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: SOMERSET
COUNTY
DOCKET NO.

Civil Action

ORDER TO SHOW CAUSE WITH
TEMPORARY RESTRAINTS PURSUANT
TO RULE 4:52

**BRIEF OF PLAINTIFFS IN SUPPORT OF ORDER TO SHOW CAUSE SEEKING
INJUNCTION**

Matthew J. Giacobbe, Esq.
Of Counsel and on the Brief

Yaacov Brisman, Esq.
Of Counsel and on the Brief

PRELIMINARY STATEMENT

The Plaintiffs, Borough of Rocky Hill (“Rocky Hill”), the Rocky Hill Board of Education (“the Board”) and the Millstone Borough Board of Education (“the Millstone Board”) (collectively, “the Plaintiffs”) are interested parties with respect to recently enacted legislation, S-3000/A-4141 (“the Legislation”). The Legislation mandates that Executive County Superintendents, who are appointed by the Department of Education, shall merge non-operating school districts with the district which they “participate in a sending-receiving relationship.”

Pursuant to the terms of the Legislation:

“[i]f a non-operating district is merged with a Type II school district ... the board of education of the new district will **initially** consist of the members of the board of the district with which the non-operating district was merged, who will serve until the expiration of the respective terms for which they were elected; and, in addition, a representative of the board of the former non-operating district, who will serve in a temporary position that will be in existence **only** until the first annual school election in which the first at-large member is elected to the board. At that first election, and every election following, any vacant positions on the board will be filled by members elected at-large by the voters of the new district.

See S-3000/A-4141 (emphasis added.) Type II school districts are districts where members of the Board of Education are voted into office, not appointed. Residents of Rocky Hill, through the administration of its Board of Education send students to the Montgomery School District (“Montgomery”). Residents of Millstone, through the administration of the Millstone Board of Education send students to the Hillsborough School District (“Hillsborough”). Both Rocky Hill and Millstone pay into their respective districts using a fixed per pupil cost.

Pursuant to the terms of the Legislation, at the next election, and each election thereafter, board members for Montgomery and Hillsborough will be chosen in an at-large election with no

guarantee that every “sending” district will be represented. In fact, the Legislation abolishes the “sending” district, leaving the residents of Rocky Hill without any governmental body to ensure that their issues and concerns are heard and considered.¹ Based upon their comparatively small populations when compared with Montgomery Township and Hillsborough Township, the Borough of Rocky Hill will be unable to elect a resident to be their representative in the newly-created school districts.

The Legislation will, for all practical purposes, prevent the Plaintiffs from being represented at the school district, although the taxpayers of the Borough will certainly be assessed taxes to pay into and support the school districts. The net effect of the Legislation is to create an unconstitutional paradigm; the Borough will pay taxes, yet will be unrepresented and will have no voice when decisions regarding the allocation of their tax revenue are implemented. Thus, the Legislation unlawfully impinges upon the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and the New Jersey State Constitution.

Accordingly, Plaintiffs come before the Court on an emergent basis respectfully requesting that the Court compel the Department of Education to demonstrate why the Court should not enjoin the Department of Education from enforcing the Legislation and specifically enjoining the Department from dissolving the Rocky Hill Board of Education and the Millstone Board of Education. In the interim, Plaintiffs beg relief in the form of an injunction which shall prevent the Department of Education from taking any actions pursuant to the Legislation. Absent such relief, the Plaintiffs and the public interest will suffer irreparable harm.

¹ This Order to Show Cause does not include any of the twenty-six (26) other non-operating school districts in the State of New Jersey.

STATEMENT OF FACTS

Pursuant to N.J.S.A. 18A:7-8, each Executive County Superintendent of Schools has the authority to eliminate districts that are not currently operating schools. The Legislature of the State of New Jersey recently passed A-4141, S-3000, which clarifies the procedure under which non-operating will be eliminated and merged into existing school districts. The Governor signed the bill into law on June 30, 2009. The Commissioner of Education has already contacted the Rocky Hill Board of Education and the Millstone Board of Education to discuss the transitioning of the non-operating district operations to the receiving district. Dates for this meeting have been proffered for as early as July 9, 2009. The emergent nature of the situation is the proper basis for the Court to enjoin the Department of Education from proceeding with enforcement of the Legislation.

LEGAL ARGUMENT

POINT I

THIS COURT SHOULD ISSUE THE REQUESTED ORDER BECAUSE THE LEGISLATION VIOLATES THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND THE NEW JERSEY STATE CONSTITUTION.

The Equal Protection Clause, part of the Fourteenth Amendment to the United States Constitution provides that:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; **nor shall any State** deprive any person of life, liberty, or property, without due process of law; nor **deny to any person within its jurisdiction the equal protection of the laws.**

(emphasis added.) Thus, each state, including New Jersey, is prohibited from taking any action, or passing any legislation, which would guarantee and protect the rights of certain citizens while simultaneously abridging the rights of other citizens.

The New Jersey State Constitution has been interpreted as conferring a right analogous to that available under the Fourteenth Amendment. The New Jersey State Constitution states:

All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.

N.J. Const. art. 1, para. 1. In fact, this language can be read to be more expansive than that of the Equal Protection clause of the United States Constitution. Right to Choose v. Byrne, 91 N.J. 287 (1982). Both the United States Constitution and the New Jersey State Constitution are implicated in the instant matter since the Legislation will grant citizens in more populated

municipalities the right to representation, while denying that right to citizens of less populated municipalities.

In Franklin v. Board of Education, 74 N.J. 345 (1978), the Court was faced with the question of whether the apportionment formula of seats for a regional school board embodied in N.J.S.A. 18A:13-8 violated the "one-person, one-vote" rule of the United States Supreme Court. The Court in Franklin held that the facts of that case, which implicated the number of seats individual municipalities held on a regional board of education based upon their population, "demonstrate that a prima facie violation of the Equal Protection Clause exists." Id. at 345-5. Thus, the Supreme Court of New Jersey has held that the right to representation on a board of education implicates the Fourteenth Amendment of the Constitution.

The New Jersey Supreme Court has addressed the seriousness with which the violations of the Equal Protection clause and Article 1, Para. 1 of the New Jersey State Constitution are viewed:

The analysis of fundamental rights under the New Jersey Constitution differs. Nowhere in that paragraph do the phrases "equal protection" or "due process" appear. Nonetheless, **article 1, paragraph 1, like the fourteenth amendment, seeks to protect against injustice and against the unequal treatment of those who should be treated alike. To this extent, article 1 safeguards values like those encompassed by the principles of due process and equal protection.** In the future, as in the past, we shall continue to look to both the federal courts and other state courts for assistance in constitutional analysis. The ultimate responsibility for interpreting the New Jersey Constitution, however, is ours. Greenberg, supra, 99 N.J. at 567-68, 494 A.2d 294.

Planned Parenthood of Cent. New Jersey v. Farmer, 165 N.J. 609, 641-2 (1999) (in dissent) (emphasis added.) Thus, the New Jersey State Constitution is equally concerned about the disparate treatment of its citizens and is implicated in this matter as well.

A. The Strict Scrutiny Standard Is Appropriate In This Case As A Fundamental Right Is At Issue.

The "one person, one vote" principle requires that "each qualified voter must be given an equal opportunity to participate in the election, and when members of an elected body are chosen from separate districts, each district must be established on a basis that will ensure, as far as is practicable, that equal numbers of voters can vote for proportionally equal numbers of officials." English v. Bd. of Educ., 301 F.3d 69 (3rd Cir. 2002). When a challenged elective system denies an equal voice to each resident, the scheme is reviewed under strict scrutiny, for "the general presumption of constitutionality afforded state statutes and the traditional approval given state classifications if the Court can conceive of a 'rational basis' for the distinctions made are not applicable." Id.

Only rights that are deeply rooted in the traditions, history, and conscience of the people are deemed to be fundamental. Lewis v. Harris, 188 N.J. 415, 423 (2006). The cry of "taxation without representation" is one of this country's oldest and most fundamental values. When a fundamental right is implicated, the challenged statute is subject to a strict scrutiny analysis and will only pass muster if it is narrowly tailored to serve a compelling state interest. Washington v. Glucksberg, 521 U.S. 702, 720-1 (1997); Roe v. Wade, 410 U.S. 113, (1973) (citations omitted); Brown v. City of Newark, 113 N.J. 565, 573 (1989) (citations omitted). Thus, any law restricting a fundamental right must both serve a compelling state purpose, and be narrowly tailored to that compelling purpose. See Secure Heritage, Inc. v. City of Cape May, 361 N.J.Super. 281, 299 (App.Div. 2003) ("A statute that regulates a 'fundamental right' . . . is subject to 'strict scrutiny ...") In this case, a fundamental right and principle is at issue, and the Court should apply a "strict scrutiny" standard when determining whether to enjoin the

Department of Education. Under a “strict scrutiny” analysis, the Legislation must fail. The abridgement of a fundamental right, absent a “compelling state purpose” is unconstitutional.

B. Under The New Jersey Analysis Of The New Jersey State Constitution, The Legislation Is Unconstitutional.

In addition to the strict scrutiny standard, when analyzing rights under the New Jersey Constitution, Courts “employ[s] a balancing test and when striking the balance, a court must consider the nature of the affected right, the extent to which the governmental restriction intrudes upon it, and the public need for the restriction.” Brown v. State, 356 N.J. Super. 71, 79 (*quoting Greenberg v. Kimmelman*, 99 N.J. 552, 567, (1985)) “Statutes carry a strong presumption in favor of constitutionality, and the proponent of invalidity bears the heavy burden of overcoming that presumption.” Id. at 79-80, 811 A.2d 501 (*citing State Farm Mut. Auto. Ins. Co. v. State*, 124 N.J. 32, 45-46 (1991); David v. Vesta Co., 45 N.J. 301, 315 (1965)).

Under the State's balancing test, the governmental interest in the statutory classification is weighed against the interests of the affected class. Sojourner A. v. New Jersey Dep't of Human Servs., 350 N.J. Super. 152, 166-67, (App.Div.), *cert. granted*, 174 N.J. 194 (2002). Similar to the Federal approach, the challenging party has the burden to show the unconstitutionality of the provision at issue. McKenney v. Byrne, 82 N.J. 304, 317 (1980). In the case at bar, the Legislation infringes upon Plaintiffs right to representation and there is no compelling reason to deny the citizens and taxpayers representation in the “receiving” school district. Thus, the Legislations violates the Equal Protection clause of the United States Constitution and Article 1, Para. 1 of the New Jersey State Constitution and constitutes an egregious violation of the prohibition of “taxation without representation.” Under any analysis, the Legislation is unconstitutional and the Court should enjoin the Department of Education from enforcing the constitutionally flawed Legislation.

C. Any Municipality Contributing Tax Dollars to a School District is Entitled to Representation on the Board of Education.

Every municipality that sends its children to a school district in an official “sending-receiving” relationship is entitled to place a representative on the board of education. This concept implicates basic doctrines of Equal Protection and the concept that “taxation without representation” violates core values of the United States. In fact, the Legislature in New Jersey has previously recognized that any municipality contributing tax revenues to a school district is entitled to representation on the board of education. With respect to regional boards of education, the Legislature mandated that each municipality have representation on the board of education.

The board of education of a regional district shall consist of nine members ... If there are nine or less constituent districts, the members of the board of education of the regional district shall be apportioned by the county superintendent or county superintendents of the county or counties in which the constituent districts are situate, among said districts as nearly as may be according to the number of their inhabitants **except that each constituent district shall have at least one member.**

N.J.S.A. 18A:13-8 (emphasis added.) Thus, the Legislature has previously recognized that each and every municipality sending its children and providing its tax revenue to a recognized school district is entitled to a permanent representative on the board. In the Legislation, the Legislature appears to have forgotten its core principles; namely, taxpayers deserve representation. There is no basis for the Legislature respecting the same right in the Legislation.

In Township of Marlboro, et al. v. The Board of Educ. of the Freehold Regional High School, 992 F. Supp. 756 (1998), the township filed an action seeking reapportionment of the board of education to reflect its larger population. The township argued that one vote per member, regardless of whether the board member was from a large municipality, or a less

populated municipality was discriminatory and resulted in unequal apportionment in violation of N.J.S.A. 18A:13-8. The defendants argued that minimizing the vote of less populated municipalities “violates the procedural due process rights of the residents of ... by rendering meaningless their vote and, thereby, their representation on the Board ...” *Id.* at 762. Although the court held that “‘one municipality, one vote’ voting scheme results in unequal apportionment due to population,” and is therefore unconstitutional, the court further upheld that the constitutional principle of “one person, one vote” is applicable to the Board at issue in the current case.” *Id.* at 765. Further, the court rejected the township's proposal for apportionment and referred the matter to the New Jersey Legislature for a solution. The Court stated:

Beyond the constitutional infirmity of systematic discrimination against voters in the more populous districts, **there exists a parallel concern that the less populated districts will now be deprived of a meaningful voice in the affairs of the regional school district.** Although it may be argued that such a result is the product of win-lose constitutional skirmishes, the loss here is pernicious ... **Thus, these constituent municipalities, which possessed one vote each prior to this application, are now reduced to a whisper in the wind, yet remain obligated to pay their apportioned share of the appropriations of the regional district. The stunning effect of taxation without representation contrary to the 1954 formation accords of one vote per constituent municipality is the type of distress that calls for a legislative solution. Although this Court writes on a clean slate, it is not the Court's prerogative to legislate through judicial fiat. This regional school district must provide a voice to all, not just some of its citizens.** Accordingly, the New Jersey State Legislature is the appropriate body to reconcile and remedy these disparate imperatives. Meanwhile, awaiting a legislative solution, **the Court will retain jurisdiction and rely on the Commissioner of Education or his designee to apportion the votes of the constituent municipalities in a constitutionally acceptable manner ...**

Id. at 765 (emphasis added.) The court ultimately ordered that each municipality has at least one (1) representative, with the largest municipality having two (2) representatives. Township of

Marlboro v. Board of Educ., 9 F. Supp. 2d 500 (D.N.J. 1998). Thus, the principles of representation were satisfied and the rights of the taxpayers of the less populated municipalities were protected. The court in Marlboro was especially sensitive to abridging the fundamental right of taxation without representation.

Both the Courts and the Legislature have thus recognized that citizens and taxpayers are entitled to representation within the board of education in which they have a “sending-receiving” relationship. Had the Legislature protected the rights of taxpayers, as embodied in N.J.S.A. 18A:13-8, Plaintiffs would have no need for the requested relief. However, the Legislature blithely does away with any protections for taxpayers, and has not decided to provide any reasoning for its decision. There is simply no basis for the Legislature to use the Legislature to deny the rights of citizens of the State of New Jersey to be represented where they are required to pay taxes. Thus, the Court must enjoin the Department of Education from enforcing the Legislature and Order the Legislature to revisit this issue to ensure that the constitutional rights of the citizenry and taxpayers is protected.

POINT II

THIS COURT SHOULD ISSUE THE REQUESTED ORDER SINCE THE REQUIREMENTS FOR ISSUANCE OF SUCH RELIEF ARE SATISFIED IN THE MATTER AT BAR.

This Court should enter an Order enjoining the Department of Education from enforcing the Legislation against Plaintiffs since irreparable harm will be sustained by the Plaintiffs if the Order is not entered, the Plaintiffs has a legal entitlement to the relief, there is a lack of dispute as to the material facts surrounding the Plaintiffs application, and a balance of the relative hardship of the parties clearly favors enjoining the Department of Education and Executive County Superintendent.

The Supreme Court of New Jersey has held that in order to obtain preliminary relief a plaintiff must show: 1) irreparable harm will visit plaintiff unless relief is granted; 2) a settled legal right to plaintiff's claim; 3) a lack of dispute as to material facts; and 4) a favorable balancing of the relative hardship of the parties. Crowe v. DeGioia, 90 N.J. 126 (1982), aff'd 102 N.J. 50 (1986). Examining each of the Crowe criteria in turn demonstrates that Plaintiffs in the matter at bar are entitled to immediate relief.

A. Irreparable Harm Will Occur if an Injunction Is Not Ordered.

The Supreme Court of New Jersey has held that a preliminary injunction may be issued when necessary to prevent irreparable harm. Crowe at 132. "Harm is generally considered irreparable in equity if it cannot be redressed adequately by money damages." Id. at 132-133. Pecuniary damages may be inadequate because of the nature of the injury or the right affected. Id. at 133, citing Outdoor Sports Corporation v. A.F. of L. Local 23032, AFL, 6 N.J. 217, 229-230 (1951); Scherman v. Stern, 93 N.J. Eq. 626, 630 (E. & A. 1922).

The Plaintiffs will be irreparably harmed if the Department of Education enforces this legislation because the taxpayers of the Boroughs will lose their Constitutional right to be

represented where they pay taxes, a blatant violation of the Equal Protection Clause of the United States Constitution.

B. The Plaintiffs Has A Legal Entitlement to Relief.

The second element that the Plaintiff must establish is a preliminary showing of a reasonable probability of ultimate success on the merits. Id., citing Ideal Laundry Co. v. Gulgiemone, 107 N.J. Eq. 108, 115-116 (E. & A. 1930). Our Supreme Court has held that the foregoing requirement is tempered by the principal that mere doubt as to the validity of the claim is not an adequate basis for refusing to maintain the *status quo*. Id.

In this matter, the Plaintiff Boards have been operating for many years to ensure that the tax revenue collected from Borough residents is properly allocated to the Montgomery School District and the Hillsborough School District. The reasoning is clear and is represented most clearly by the representation requirement of N.J.S.A. 18A:13-8; if a citizenry is required to pay taxes, they are entitled to representation as to how those tax revenues are allocated. Because the Plaintiffs meet the second prong of the Crowe criteria, they are entitled to the relief requested.

C. The Facts Surrounding this Matter are Undisputed.

In Crowe, the Supreme Court of New Jersey also held that a preliminary injunction should not issue where all material facts are uncontroverted. Id. at 133, citing Citizens Coach Cov. v. Camden Horse R.R. Co., 29 N.J. Eq. 299, 305-306 (1878). There are absolutely no material facts in dispute with regard to Plaintiffs request. It is submitted that Plaintiffs have an undisputed right to immediate relief pending a full hearing on the merits in this regard pursuant to Crowe.

D. The Relative Hardships Favor Granting the Plaintiffs's Application to Enjoin the Defendants.

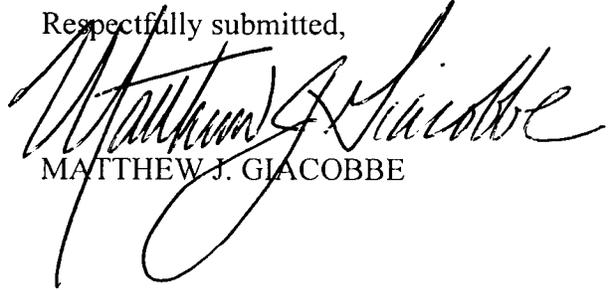
The final portion of the Crowe test requires the balancing of "the relative hardship to the parties in granting or denying relief." Crowe, 90 N.J. at 134. If the Order Plaintiffs request is not entered, the Department of Education will move forward with merging the Board with the Montgomery school district and the process of undoing that action will be far more complex. Enjoining the Department of Education will provide the Legislature another opportunity to revisit this issue. Maintaining the status quo is far less obtrusive than permitting an unlawful action to take place which will later require the Plaintiffs to resume operations at a later date. Any inconvenience to the Department of Education, if there would be any at all, would be minimal and is far outweighed by the strong public interest against permitting taxation without representation and ensuring that the Plaintiffs taxpayers are represented.

Therefore, because all of the elements for the issuance of an Order enjoining the Department of Education have been met, it is respectfully requested that the Department of Education be enjoined from directing the Somerset Executive County Superintendent to merge the Rocky Hill Board of Education with the Montgomery School District and the Millstone Board of Education with the Hillsborough Board of Education.

CONCLUSION

Based on the foregoing, this Court should grant the Plaintiffs application for an Order enjoining the Department of Education from enforcing the Legislation and granting the relief requested in Plaintiffs Order to Show Cause. The Order is necessary to ensure the protection of the public's constitutional rights.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Matthew J. Giacobbe". The signature is written in a cursive style with a large, sweeping flourish at the end.

MATTHEW J. GIACOBBE

Dated: 7-2-09

SCARINCI HOLLENBECK
1100 VALLEY BROOK AVENUE
P.O. BOX 790
LYNDHURST, NEW JERSEY 07071-0790
Telephone: (201) 896-4100
Attorneys for Plaintiffs, Borough of Rocky Hill,
Rocky Hill Board of Education,
Millstone Borough Board of Education,
Janine Lacava
Our File No. 9110.1000

Borough of Rocky Hill, Rocky Hill Board of
Education, Millstone Borough Board of
Education, Janine Lacava (an individual
taxpayer from the Borough of Rocky Hill)

Plaintiff(s),

vs.

State of New Jersey, New Jersey Department
of Education, County Executive
Superintendent, Somerset County

Defendant(s)

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: SOMERSET
COUNTY
DOCKET NO.

Civil Action

ORDER TO SHOW CAUSE PURSUANT TO
RULE 4:52

THIS MATTER having been brought before the Court by Scarinci Hollenbeck, counsel for plaintiffs, seeking relief by way of summary action pursuant to R. 4:52, based upon the facts set forth in the Verified Complaint filed herewith; and the Court having determined that this matter may be commenced by Order to Show Cause as a summary proceeding pursuant to 4:52 and for good cause shown;

IT IS ON THIS DAY OF , 2009;

ORDERED that the Defendants appear and show cause on the ____ day of _____, 2009, before the Superior Court at the Somerset County Courthouse, in Somerville, New Jersey at ____ o'clock in the _____ noon or as soon thereafter as counsel may be heard, why judgment should not be entered for:

(a) An Order that the Department of Education is enjoined from enforcing A-4141/S-3000;

(b) An Order that the Executive County Superintendent of Somerset County shall not dissolve, merge, or take any other action against the Rocky Hill Board of Education or the Millstone Board of Education until this matter has been further adjudicated;

(c) An Order that the Legislature revise A-4141/S-3000 to grant "sending" municipalities permanent representation or seats on "receiving" Boards of Education;

(d) Granting such other relief as the Court deems equitable and just.

AND IT IS FURTHER ORDERED that:

1. A copy of this Order to Show Cause, Verified Complaint and all supporting Affidavits or Certifications submitted in support of this application be served upon the Defendants within _____ days of the date hereof, in accordance with R. 4:4-4, this being original process.

2. The Plaintiff must file with the Court its Proof of Service of the pleadings on the Defendants no later than three (3) days before the return date.

3. Defendants shall file and serve a written answer, an answering Affidavit, or a Motion returnable on the return date, to this Order to Show Cause and the relief requested in the Verified Complaint and Proof of Service of the same by _____, 2009. The Answer, Answering Affidavit or Motion, as the case may be, must be filed with the Clerk of the Superior Court in the county listed above and a copy of the papers must be sent directly to the Chambers of the Honorable _____.

4. Plaintiff must file and serve any written reply to the Defendants' Order to Show Cause opposition by _____, 2009. The reply papers must be filed with the Clerk of the

Superior Court in the county listed above and a copy of the reply papers must be sent directly to the Chambers of the Honorable_____.

5. If the Defendants do not file and serve opposition to this Order to Show Cause, the application will be decided on the papers on the return date and relief may be granted by default, provided that the Plaintiff files a proof of service and a proposed form of Order at least three (3) days prior to the return date.

6. If the Plaintiff has not already done so, a proposed form of Order addressing the relief sought on the return date (along with a self-addressed return envelope with return address and postage) must be submitted to the Court no later than three (3) days before the return date.

7. Defendants take notice that the Plaintiff has filed a lawsuit against you in the Superior Court of New Jersey. The Verified Complaint attached to this Order to Show Cause states the basis of the lawsuit. If you dispute this Complaint, you or your attorney, must file a written Answer, an Answering Affidavit, or a Motion returnable on the return date, to the Order to Show Cause and Proof of Service before the return date of the Order to Show Cause.

These documents must be filed with the Clerk of the Superior Court in the county listed above. A list of these offices is provided. Include a \$_____ filing fee payable to the Treasurer, State of New Jersey. You must also send a copy of your Answer, Answering Affidavit or Motion to the Plaintiff's attorney whose name and address appear above. A telephone call will not protect your rights; you must file and serve your Answer, Answering Affidavit or Motion (with the fee); or a judgment may be entered against you by default.

8. If you cannot afford an attorney, you may call the Legal Services office in the county in which you live. A list of these offices is provided. If you do not have an attorney and are not

eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A list of these numbers is also provided.

9. The Court will entertain argument, but not testimony on the return date of the Order to Show Cause, unless the Court and parties are advised to the contrary no later than _____ days before the return date.

J.S.C.

SCARINCI HOLLENBECK
1100 VALLEY BROOK AVENUE
P.O. BOX 790
LYNDHURST, NEW JERSEY 07071-0790
Telephone: (201) 896-4100
Attorneys for Plaintiffs, Rocky Hill Board of Education,
Borough of Rocky Hill, Millstone Borough Board of Education,
Janine Lacava
Our File No. 9110.1000

Borough of Rocky Hill, Rocky Hill Board of
Education, Millstone Borough Board of
Education, Janine Lacava (an individual
taxpayer from the Borough of Rocky Hill)

Plaintiff(s),

vs.

State of New Jersey, New Jersey Department
of Education, County Executive
Superintendent, Somerset County

Defendant(s)

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: SOMERSET
COUNTY
DOCKET NO.

Civil Action

**CERTIFICATION OF
SERVICE**

I, Mary Athenas, legal assistant to Matthew J. Giacobbe, Esq., do hereby certify that on
July 2, 2009 I caused the within Verified Complaint, Order to Show Cause with Temporary
Restraints Pursuant to Rule 4:52, and Order to Show Cause Pursuant to Rule 4:52 to the
following parties via Express Process Service.

Office of Attorney General
State of New Jersey
8th floor, West Wing
25 Market Streret
Trenton, New Jersey 086725

Commissioner of Education
100 River View Plaza
Trenton, New Jersey 08625

Executive County Superintendent of Somerset County
27 Warren Street
4th floor
Somerville, New Jersey 08876


MARY ATHENAS

Dated: July 2, 2009

SCARINCI HOLLENBECK
1100 VALLEY BROOK AVENUE
P.O. BOX 790
LYNDHURST, NEW JERSEY 07071-0790
Telephone: (201) 896-4100
Attorneys for Plaintiffs, Rocky Hill Board of Education,
Borough of Rocky Hill, Millstone Borough Board of Education,
Janine Lacava
Our File No. 9110.1000

Borough of Rocky Hill, Rocky Hill Board of
Education, Millstone Borough Board of
Education, Janine Lacava (an individual
taxpayer from the Borough of Rocky Hill)

Plaintiff(s),

vs.

State of New Jersey, New Jersey Department
of Education, County Executive
Superintendent, Somerset County

Defendant(s)

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: SOMERSET
COUNTY
DOCKET NO.

Civil Action

**CERTIFICATION OF
SERVICE**

I, Mary Athenas, legal assistant to Matthew J. Giacobbe, Esq., do hereby certify that on July 2, 2009 I caused the within Verified Complaint, Order to Show Cause with Temporary Restraints Pursuant to Rule 4:52, and Order to Show Cause Pursuant to Rule 4:52 to the following parties via Express Process Service.

Office of Attorney General
State of New Jersey
8th floor, West Wing
25 Market Streret
Trenton, New Jersey 086725

Commissioner of Education
100 River View Plaza
Trenton, New Jersey 08625

Executive County Superintendent of Somerset County
27 Warren Street
4th floor
Somerville, New Jersey 08876


MARY ATHENAS

Dated: July 2, 2009